

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

MERVYN A. PHELAN, SR.

*
*
*
*
*

Criminal No. JFM-12-0103
Civil No. JFM-16-288

AMENDED MEMORANDUM

Mervyn Phelan, Sr. has filed a motion under 28 U.S.C. § 2255. The motion will be denied.

Phelan contends that his trial counsel, Gerald Martin, was ineffective because he failed to inform the court that he was aware of a conspiracy between Fort Howard Development, LLC and Smith, Gildea, & Schmidt to withhold information from the U.S. Attorney's Office. Phelan does not suggest in any way how this alleged ineffective assistance of counsel undermined the guilty plea that he entered on June 11, 2014. Moreover, a review of the statement of facts does not show any connection between the alleged ineffective assistance of counsel and the facts underlying the guilty plea.

Additionally, a Certificate of Appealability is not warranted as it may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Phelan "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (citation and internal quotation marks omitted), or that "the issues presented are adequate to deserve encouragement to proceed further," *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also Buck v. Davis*, ____ U.S. ___, 137 S. Ct. 759, 773-74 (2017). Because this court

finds that there has been no substantial showing of the denial of a constitutional right, a Certificate of Appealability will not issue. *See* 28 U.S.C. § 2253(c)(2). Denial of a Certificate of Appealability in the district court does not preclude Phelan from requesting a Certificate of Appealability from the appellate court.

A separate order is being entered herewith denying Phelan's motion.

Date: Aug 7, 2017

120710
J. Frederick Motz
United States District Judge

BY _____ DEPUTY
CLERK'S OFFICE
AT BALTIMORE

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2017 AUG -9 AM 11:42